## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

Demond Derrick Burgess,	) C/A No.: 1:11-369-CMC-SVH
# B1081062608,	)
Plaintiff,	)
VS.	) REPORT AND RECOMMENDATION
	) REFORM MESONMENDATION
J. Reuben Long Detention Center;	)
Officer Gage,	)
D 0 1	)
Defendants.	)
	<i>)</i>

Plaintiff is a pre-trial detainee at the J. Reuben Long Detention Center in Conway, South Carolina and brings this action pursuant to 42 U.S.C. § 1983, against the J. Reuben Long Detention Center and a female correctional officer who saw him naked. Plaintiff contends his "14th Amendment right of religion" was violated and he was "mentally and physically" embarrassed. Compl. at 3. Plaintiff states that he filed a grievance on January 15, 2011. Plaintiff has not received an answer to his grievance. In his prayer for relief, Plaintiff writes: "I would like for the officer to be terminated and for this to never happen to another inmate." *Id.* at 4.

## I. Standard of Review

Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02 (D.S.C.), the undersigned is authorized to review such complaints and petitions for relief and submit findings and recommendations to the district judge. The *in forma pauperis* statute authorizes the district court to dismiss a case if it is satisfied that the action is frivolous or fails to state a claim on which relief may be granted. 28 U.S.C.

§ 1915(e)(2)(B)(i) and (ii). As a *pro se* litigant, Plaintiff's pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by lawyers. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam). Even under this less stringent standard, the *pro se* complaint is subject to summary dismissal. The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. *Weller v. Dep't of Social Services*, 901 F.2d 387, 391 (4th Cir. 1990).

## II. Discussion

The J. Reuben Long Detention Center is a group of buildings or a facility. Inanimate objects such as buildings, facilities, and grounds do not act under color of state law. Hence, the J. Reuben Long Detention Center is not a "person" subject to suit under 42 U.S.C. § 1983. *See Thomas v. Anderson City Jail*, No. 6:10-3270-RMG-KFM, 2011 WL 442053 (D.S.C. Jan. 19, 2011) (holding that Anderson City Jail is a building and is not subject to suit); *Jones v. Lexington County Detention Center*, 586 F.Supp.2d 444, 451 (D.S.C. 2008) (finding that Lexington County Detention Center is a physical institution that is not subject to liability under § 1983).

Plaintiff is not entitled to relief for mental stress and embarrassment from having been seen naked. See 42 U.S.C. § 1997e(e); Lynch v. Falsely, C/A No. 3:09-81-CMC-JRM2009 WL 398073 \*3 (D.S.C. Feb. 17, 2009) (finding that there is no constitutional right to be free from emotional distress, and, hence, there is no liability under § 1983 regarding the plaintiff's claim for embarrassment). Moreover this court has held that the

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occasional viewing of a naked male prisoner by a female correctional officer is not a

constitutional violation of the prisoner's right to privacy. Roberts v. Ozmint, C/A No.

6:05-2324-MBS-WMC, 2006 WL 2303183 (D.S.C. Aug. 8, 2006) (finding that a male

plaintiff's constitutional rights were not violated because he was observed by female

correctional officers while naked and while using the toilet), affirmed, No. 06-7465, 213

Fed.Appx. 190, 2007 WL 136690 (4th Cir. Jan. 18, 2007).

Finally, this court cannot render the relief Plaintiff seeks in requesting that Officer

Gage be fired. See Maxton v. Johnson, 488 F. Supp. 1030, 1032 n. 2 (D.S.C. 1980) (a

federal district court lacks inherent power to hire, remove, or reassign officials not within

the executive control of that federal district court).

III. Recommendation

Accordingly, it is recommended that the District Court dismiss the above-

captioned case without prejudice and without issuance and service of process.

IT IS SO RECOMMENDED.

March 15, 2011

Florence, South Carolina

Shiva V. Hodges

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United States Magistrate Judge

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